

IN THE UNITED STATES PATENT & TRADEMARK OFFICE



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APPLICANT: MICHAEL E. TOMPKINS
AND MICHAEL J. GREEN

GROUP ART UNIT: 2314
PUBLICATION DIVISION

SERIAL NO.: 08/162,420

FILED: December 3, 1993

EXAMINER: E. Ramirez

FOR: SPA CONTROL SYSTEM

Batch No.: B54

PETITION TO WITHDRAW APPLICATION FROM ISSUE

Commissioner of Patents & Trademarks
Washington, D.C. 20231

Date: February 7, 1995
Docket No.: 86-1198-06

Sir:

Applicant respectfully petitions to have U.S. Serial No. 08/162,420 withdrawn from Issue pursuant to 37 C.F.R. §1.313(b)(5). The Assignee of the present invention recently (after June 10, 1994, the date of allowance) has learned of prior art patent, U.S. Patent No. 4,332,297, during the course of related litigation on a commonly assigned patent. The Assignee of the present application desires the Examiner to review U.S. Patent No. 4,332,297 (a copy of which is attached as Exhibit A) when passing on the allowability of this application. On September 9, 1994, the Assignee filed with the Office an advertisement that appeared in the November 3, 1986 (Vol. 25, No.21) issue of *Pool & Spa News*. A copy of this advertisement is attached as Exhibit B. Assignee also requests the Office to consider this advertisement. The Assignee understands that the application currently is in the Draft Branch, and no issue date has been assigned. The fee for this Petition may be charged to Deposit Account No. 15-0697 of David Ostfeld, P.C.

The Assignee owns U.S. Patent No. 5,361,215, which has a common parent with this application. On November 14, 1994, Assignee filed suit in the Southern District of Texas on U.S. Patent No. 5,361,215. The defendant in that case has argued in subsequent pleadings that the '215 patent is invalid based upon U.S. Patent No. 4,322,297.

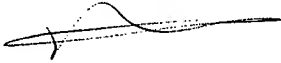
The Assignee request that the Office consider U.S. Patent No. 4,322,297 and the *Pool & Spa News* advertisement. Consequently, the Assignee requests the Office to withdraw

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287

U.S. Serial No. 08/162,420 from issuance and abandon it as set out in a separate File

Wrapper Continuing Application (FWC) Transmittal filed concurrently with this Petition.

Respectfully submitted,



David Ostfeld, Reg. 27,827
Attorney for Applicant
Chamberlain, Hrdlicka, White,
Williams & Martin
1200 Smith Street, Suite 1400
Houston, Texas 77002
(713) 658-1818

CERTIFICATE OF MAILING

I hereby certify that the attached communication is being deposited in the United States mail as Express Mail Next Day Service, No. NB268205619, in an envelope addressed to Commissioner of Patents and Trademarks, Washington, D.C. 20231, on February 7, 1995 from Houston, Texas by Donna G. Davis.

In the event that such communication is not timely filed in the United States Patent and Trademark Office, it is requested that this paper be treated as a petition and that the:

☒ delay in prosecution be held unavoidable - 35 U.S.C. 133.

☒ delay payment of the fee be accepted - 35 U.S.C. 151.

The petition fee required is authorized to be charged to Deposit Account No. 15-0697 in the name of David Ostfeld, P.C.

The undersigned declare further that all statements made herein are true, based upon the best available information; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Feb. 7, 1995

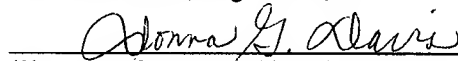
Date

Feb. 7, 1995

Date



David M. Ostfeld, Reg. No. 27,827



(Signature of person mailing, if other than the above)